

TITLE 4: BUSINESS AND SPECIAL LICENSES, REGULATIONS

DIVISION 6: SOLID WASTE HANDLING FRANCHISES

Chapter 4: COMPENSATION.

Sections:

- 46.041 Compensation.
- 46.042 Adjustment to Total Rate.
- 46.043 Dispute Resolution re Adjustment to Total Rates.
- 46.044 Notice to Subscribers re Certain Adjustments.
- 46.045 Discontinuance of Service for Non-Uniform Handling Service.

46.041 Compensation.

(a) Charges for Solid Waste Handling services (including, without limit, for use of a Solid Waste Facility) provided to Grantees' subscribers shall be paid by such service subscribers in accordance with the Total Rate approved by the Board in its approval or extension of the Franchise Agreement with Grantee, as such Total Rate is adjusted pursuant to Section 46.042. By April 1 of each year the Grantee shall warrant to the County, in a writing signed by an officer, that during the prior calendar year it billed all of the Solid Waste Handling service subscribers provided service under its Franchise Agreement at the rates set forth in the Total Rate approved with and applicable to its Franchise Agreement, as such Total Rate may have been adjusted pursuant to the provisions of this Chapter. Copies of subscriber billings which demonstrate the above shall be made available to the Department on its request.

(b) All charges for services rendered by a given Grantee shall be uniform and non-discriminatory for the type of service provided and reasonably based upon the type and/or number of containers, type of Solid Waste, whether compacted or loose, number of separate pick-up points at any place of collection, placement of container(s) or distance of carry-out, frequency of collection, remote location, terrain, disposal costs, and whether residential, commercial, construction or industrial collection.

(c) (1) In cases where Grantee includes a Solid Waste Facility Fee amount as a separate listing on a subscriber's bill, the County shall prescribe the amount consistent with waste generation factors established in the Franchise Agreement and the applicable Solid Waste Facility Fee.

(2) Grantee shall refund to each subscriber, on a pro rata basis, any advance service payments made by such subscriber for service not provided when service is discontinued by timely written notification to Grantee by the subscriber. Grantee may not require written notice to be given more than fifteen (15) working (waste collection) days prior to the date on which service is desired to be discontinued.

(3) On a quarterly basis, the County shall be allowed to furnish, for inclusion with Grantee's billing, a message for the purpose of public education regarding waste disposal, recycling, or other environmental issues. If Grantee mails its billing in an envelope, two of the four County messages may be in the form of a one (1) page insert, provided the insert is: print ready copy which conforms to Grantee's billing, is delivered to Grantee by the Department fifteen (15) working (waste collection) days in advance of Grantee's billing date and does not cause an increase in the postal rates payable by Grantee for mailing its billing. If the message is not in the form of an insert, it shall be printed by Grantee on its bills. Such message shall not exceed twenty-five (25) characters and shall be delivered to Grantee by the Department fifteen (15) working (waste collection) days in advance of Grantee's billing date. Grantee shall include such insert in, or print such message on, each subscriber's next billing.

Adopted Ordinance #3670 (1996);

46.042 Adjustment to Total Rate.

The following annual and special rate adjustments shall be made to the Total Rate provided for in a Franchise Agreement. However, no rate adjustment shall be implemented for or during any period of time when the affected Grantee is not in substantial compliance with all material provisions of this Division.

(a) Cost of Living Adjustment:

(1) From and after the first July 1, following the effective date of a Franchise Agreement, the Total Rate shall be annually adjusted upwards by adding the following cost of living adjustment to the then current Total Rate. The cost of living adjustment shall be equal to the consumer price adjustment (as described herein) multiplied by the then current Modified Total Rate (i.e., the Total Rate less all increments thereof which are passed through to the subscriber [e.g., Solid Waste Facility Fee, Franchise Fee]).

(2) The consumer price adjustment shall equal:

(A) Seventy percent (70%) multiplied by the year-over-year change in the Employment Cost Index; plus

(B) Thirty percent (30%) multiplied by the year-over-year change in the Producer Price Index;

except that in determining any annual cost of living adjustment the consumer price adjustment shall in no event be less than two percent (2%) nor greater than eight percent (8%).

(3) The cost of living adjustment for the first July 1 following the effective date of a Franchise Agreement shall equal the cost of living adjustment as determined above, multiplied by a fraction, the denominator of which is 12 and the numerator of which is the number of whole months between the Franchise Agreement's effective date and the

specified July 1.

(4) If either or both the Employment Cost Index and the Producer Price Index are no longer published by the United States Department of Labor Statistics, then the consumer price adjustment shall be determined by using the index which is published by the United States Department of Labor Statistics as a substitute for the discontinued Index.

(b) Solid Waste Facility Fee Adjustment: The Solid Waste Facility Fee adjustment shall be the pass through of one hundred percent (100%) of any increase or decrease in the fee charged to the Grantee for use of a Solid Waste Facility approved for use by the Department, calculated on a per subscriber basis, and shall be effective as of the date of the change to such fee.

(c) Franchise Fee Adjustment: The Franchise Fee adjustment shall be the pass through of one hundred percent (100%) of any increase or decrease in the Franchise Fee, and shall be effective as of the date the Franchise Fee increase or decrease is payable by the Grantee.

(d) Change in Service Level Adjustments:

(1) The Total Rate shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the level of the Solid Waste Handling services which may be required of, or agreed to by, a Grantee. A Change in Service Level Adjustment shall be effective on and after the actual date of the requirement to or agreement to change operations which results from the change in service, but, absent the consent of the Department, not sooner than the effective date of the change in service. In no event shall any Change in Service Level Adjustment be effective prior to the Board's approval of an amendment to the applicable Franchise Agreement.

(2) In the event that the Department and the Grantee claiming to be affected by the change in service level cannot agree on either the existence, or the effect on demonstrable costs, of a change in service level, the dispute resolution provisions of Section 46.043(a) shall apply.

(e) Change in Law Adjustments:

(1) The Total Rate shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the manner or nature of conducting Solid Waste Handling services necessitated by a Change in Law. A Change in Law Adjustment shall be effective on and after the actual date of the change in operations which resulted from the Change in Law, but, absent the consent of the Department, not sooner than the effective date of the Change in Law. In no event shall any Change in Law Adjustment be effective prior to the Board's approval of an amendment to the applicable Franchise Agreement.

(2) In the event that the Department and the Grantee claiming to be affected by the Change in Law cannot agree on either the existence, or the effect on demonstrable costs, of a Change in Law, the dispute resolution provisions of Section 46.043(a) shall apply.

Adopted Ordinance #3670 (1996);

46.043 Dispute Resolution re Adjustment to Total Rates.

(a) Any dispute regarding any Change in Service Level Adjustment or Change in Law Adjustment provided for in Sections 46.042(d) and (e) above, which cannot be resolved between the Grantee and the Department within thirty (30) days of the receipt by the Department of such documents as the Department may reasonably request, shall be submitted to a mutually agreed upon expert in the subject matter area of the dispute to resolve the dispute as to either or both: (i) the existence of a change in the level of service or a Change in Law; and/or (ii) the effect on the Grantee's demonstrable costs of a change in the level of service or a Change in Law. The decision of the expert shall be binding on the Grantee and the County. The cost of the expert shall be borne equally by the Grantee and the County. If the Grantee and County cannot mutually agree upon an expert, either may petition the Superior Court of the County of San Bernardino to have an expert chosen by the court. The County and Grantee shall each have the right to suggest one expert to the court; the court shall choose one of the suggested experts.

(b) Any dispute regarding the current rate schedule or rate adjustments (except those disputes related to a Change in Service Level Adjustment or Change in Law Adjustment) shall be decided by the Director within ten (10) working days after receipt of a written statement from the Grantee of the nature and basis of the dispute with a request that it be resolved by the Director. Grantee shall have the right to appeal the Director's decision in writing to the Board within thirty (30) days after the Director has given the Grantee written notice of the decision. Such appeal shall conform to the appeal provisions set forth in Section 46.101 of this Division in respect to the form of the Notice of Appeal, the time limits for processing the appeal, and the amount of fees, if any, connected therewith. The Board may consider the appeal or refer said appeal to a hearing officer as provided in Section 46.101 of this Division.

(c) The most recent rates approved by the Director in effect at the time a dispute is submitted to either the expert or Director, as the case may be, shall remain in effect pending resolution of such dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall be determined by the expert, the Director, the Board or a hearing officer, as appropriate.

Adopted Ordinance #3670 (1996);

46.044 Notice to Subscribers re Certain Adjustments.

(a) No Change in Service Level Adjustment increase or Change in Law Adjustment increase which applies to five hundred (500) or more Solid Waste Handling Service subscribers or to subscribers cumulatively generating one thousand five hundred (1,500) or more cubic yards of Solid Waste per month may be implemented until at least ten (10) days after completion of publication of a notice of the proposed increase as set forth herein.

(b) The notice shall be published at the Grantee's expense in a newspaper which is published once a week or more often and which is of general circulation within the community or geographical area affected by the proposed rate increase. The notice shall be published once a week for two (2) successive weeks, with at least five (5) days intervening between the respective publication dates. The period of notice commences upon the first day of publication and is completed upon the date of the second publication.

(c) The notice shall be in the form of a display advertisement at least one-sixteenth (1/16) of a page in size and shall contain, at a minimum, the following information:

(1) The name, address and toll-free telephone number of the Grantee;

(2) In bold print letters at least one-quarter inch (1/4") high the words, "NOTICE OF PROPOSED INCREASE IN CHARGES FOR SOLID WASTE HANDLING SERVICES";

(3) A statement that an increase in service rates may occur, specifying which rates would be affected if the increase were approved, and stating the current rate and the proposed new rate;

(4) The effective date of each proposed rate increase; and

(5) A statement that any interested person may submit written comments concerning the proposed rate increase or increases to the Contract Administrator of the Waste System Division of the County of San Bernardino, giving the mailing address for the Contract Administrator and giving the date by which comments must be received by the Contract Administrator in order to be sure of consideration. Such date shall be no earlier than the tenth (10th) calendar day after the completion of publication of the notice.

(6) Proof of publication of the notice shall be furnished to the Director before any Change in Service Level Adjustment or Change in Law Adjustment is approved or implemented.

Adopted Ordinance #3670 (1996);

46.045 Discontinuance of Service for Non-Uniform Handling Service.

Except where Uniform Handling Service is implemented, Grantee may discontinue service for non-payment of subscriber's billing or subscriber's failure to substantially comply with the requirements of the applicable provisions of state or local law which govern use, storage and collection of Solid Waste. After the Grantee has given fifteen (15) days' notice to subscriber for non-payment, Grantee shall notify the Director in writing of any service termination including a written copy of the notice to the subscriber. Upon payment of the delinquent fees, if applicable, Grantee shall resume collection on the next regularly scheduled collection day. Any Grantee operating in a Uniform Handling Area shall not discontinue service except as allowed in Section 46.057.

Adopted Ordinance #3670 (1996);